

**COMMONWEALTH OF MASSACHUSETTS**

**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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In the matter of:

Massachusetts Municipal Wholesale Electric Company )

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D.T.E. 99-91-A

**MOTION OF READING MUNICIPAL LIGHT DEPARTMENT  
FOR AN OPPORTUNITY FOR DISCOVERY AND HEARING  
AND TO EXTEND THE PROCEDURAL SCHEDULE**

INTRODUCTION

Reading Municipal Light Department (“RMLD”), an intervenor in the above-captioned matter, hereby respectfully requests that the Department of Telecommunications and Energy (“Department” or “DTE”) extend the procedural schedule issued in this proceeding on July 13, 2001 to allow RMLD a reasonable opportunity to conduct discovery and to have a hearing and present witnesses with respect to the issues raised by Massachusetts Municipal Wholesale Electric Company’s (“MMWEC”) request to amend the DTE’s March 24, 2000 Order in D.T.E. 99-91 (or “Order”).

In this case MMWEC seeks to substantively change the Department’s March 24, 2000 Order. This case is unlike those proceedings where the Department issues record requests simply to clarify certain evidence in the record before closing a docket. If this were a case where MMWEC only needed to clarify certain evidence before a decision could be rendered, then the Department conceivably could have resolved this matter through MMWEC’s request for so-called “technical corrections.” This is not such a case. Here, MMWEC seeks to substantively change the Department’s

March 24, 2000 Order, and both the DTE and RMLD have issued requests for new evidence relative to MMWEC's request.

### BACKGROUND

The issues before the Department in this reopened proceeding are of great significance. The DTE Order conditioned approval of the refinancing on its review of MMWEC's amended and restated General Bond Resolution ("GBR"). MMWEC has requested that the DTE review the GBR after the refinancing bonds have been issued. RMLD contends that such a review, as MMWEC is requesting, would be meaningless since all of MMWEC's bonds would have already been refinanced. If the DTE reviewed the GBR after the bond issuance and found it inconsistent with the GBR that MMWEC placed in evidence in this case, and upon which the DTE relied when it issued its Order, the DTE would be foreclosed to take any action since the bonds would have already been issued.

The GBR is a significant document for MMWEC, MMWEC's Bond Fund Trustee, MMWEC's bondholders and MMWEC's Massachusetts Municipal Light Plants' Project Participants. The GBR is a contract between MMWEC and its bondholders and plays a crucial role in how the MMWEC bonds are issued and how the bond funds are used. The GBR is also referenced in the Power Sales Agreements between MMWEC and the Project Participants.<sup>1</sup> MMWEC has basically used the same GBR for decades. MMWEC is now, for the first time, seeking to restructure the GBR. This restructuring is substantial. RMLD and the Department carefully reviewed the GBR. It is crucial to the financial interests of Project Participants, such as RMLD, that the GBR being restructured by

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<sup>1</sup> Even though the Project Participants are not signatories to the GBR and have not been represented in the negotiations regarding the GBR, MMWEC attempted to use the GBR to unilaterally amend the Power Sales Agreements to significantly increase the Project Participants' charges above the actual costs, including debt service, being incurred by the Projects. This example shows how MMWEC uses the GBR.

MMWEC Board votes and being used for the refinancing is the same GBR that the Department reviewed in issuing its Order. Discovery and a hearing are required to make sure that this is the situation.

The Department also conditioned its approval of the refinancing on reviewing MMWEC's board of directors' resolution or approval of "any bond, debt, or note refinancing or refunding" undertaken pursuant to the Order. MMWEC is requesting that the Order be significantly changed, so that this review occurs after the refinancing bonds have been issued. Again, such a DTE review would be meaningless since the bonds will have already been issued. It is important that the aforementioned MMWEC Board votes are consistent with the evidence placed in the record upon which the DTE issued its Order. For example, these votes would need to be examined regarding the GBR. As another example, these votes would need to be examined to make sure that the light plants are receiving the savings from the refinancing. This issue is important given the fact that interest rates are now probably lower than what MMWEC was using in its analysis before the Department. Therefore, there should be more savings from the refinancing. In this era of increased competition, it is important to review the MMWEC Board votes to assure that savings go to the Project Participants (municipal light plants) and hence to the ratepayers. Discovery and a hearing are necessary to assure such a result, in accord with the DTE Order.

#### RMLD's PROCEDURAL REQUEST

By this motion, RMLD simply requests that the Department allow RMLD to exercise the same due process rights that it possessed before the DTE issued its March 24, 2000 Order in this adjudicatory proceeding. In making this motion, RMLD does not seek any undue delay of the Department's ultimate disposition of MMWEC's request. Rather, RMLD only seeks sufficient time to

review MMWEC's responses to RMLD's information requests and the Department's record requests. After such review of one week from the time RMLD receives MMWEC's responses to its information requests, RMLD seeks a hearing where it can examine MMWEC's experts on their answers to the DTE's and RMLD's discovery. Just as RMLD had the right to examine MMWEC's experts on their testimonies and discovery responses in the adjudicatory proceeding before the Department issued its March 24, 2000 Order, RMLD has the same right to examine MMWEC's experts and witnesses on their answers to the newly issued discovery and on the issues which have been opened by MMWEC's request and set forth by the Department in its July 13, 2001 Order. MMWEC's responses to the aforementioned discovery cannot be allowed to be placed untested in the record without being examined.

As set forth below, under the current procedural schedule, RMLD is not even afforded the right to a hearing, as required by G.L. c. 30A. RMLD, as an intervenor, also has rights under G.L. c. 25 § 5. Moreover, the current schedule does not allow sufficient time for MMWEC to respond to information requests issued by RMLD on July 17, 2001. RMLD respectfully reserves its right to a hearing pursuant to G.L. c. 30A on any issues that are in dispute after discovery is completed.

In further support of its motion, RMLD states the following:

1. On November 1, 1999, MMWEC filed with the Department a petition requesting approval of comprehensive debt restructuring plan. Massachusetts Municipal Wholesale Electric Company, D.T.E. 99-91, at 1 (March 24, 2000) ("*MMWEC Decision*").
2. The Department granted RMLD intervenor status in D.T.E. 99-91.
3. D.T.E. 99-91 clearly was an adjudicatory proceeding. An "adjudicatory proceeding" is "a proceeding before an agency in which the legal rights, duties or privileges of specifically named persons

are required by constitutional right or by any provision of the General Laws to be determined after opportunity for an agency hearing..." G.L. c. 30A, § 1(1). The Department held a hearing in D.T.E. 99-91 on January 19, 2000.

4. On March 24, 2000, the Department issued an Order in the above matter approving a comprehensive debt-restructuring plan by MMWEC, subject to certain crucial conditions. This decision was not appealed and the docket was closed.

5. On May 11, 2001, MMWEC requested certain changes to the Department's Order, arguing that it sought only "technical corrections."

6. After considering further argument from both RMLD and MMWEC with respect to MMWEC's May 11, 2001 request, on July 13, 2001, the Department disagreed with MMWEC's position and issued a ruling reopening the record pursuant to 220 C.M.R. 1.11(8) to take additional evidence in this proceeding. *MMWEC Decision* at 4.

7. 220 C.M.R. 1.11(8) states in relevant part, "Reopening Hearings. No person may present additional evidence after having rested nor may any hearing be reopened after having been closed, except upon motion and showing of good cause...."

8. Where, in a case such as this, the record has been reopened and requests have been issued for additional evidence, the procedure under 220 C.M.R. 1.11(8) sets forth that the DTE will hold a hearing to accept the additional evidence and allow cross-examination by intervenors.

9. On July 13, 2001, the Department also issued record requests to MMWEC and set a procedural schedule as follows:

July 20, 2001 – MMWEC's responses to the Department's record requests due;

July 27, 2001 – Initial briefs of the parties due; and

August 3, 2001 – Reply briefs due.

10. This current procedural schedule does not address or accommodate discovery to be conducted by RMLD or contemplate a hearing on the issues.

11. As an intervenor in this proceeding, RMLD has all of the rights of a party in an adjudicatory proceeding. G.L. c.30A, § 10.

12. Under the Department’s regulations, discovery is intended, among other things, “to protect the rights of the parties and to ensure that a complete and accurate record is compiled.” 220 C.M.R. 1.06 (6)(c)(1). The presiding officer has an obligation to establish discovery procedures, which take into account the rights of the parties in the context of the case at issue. 220 C.M.R. 1.06 (6)(c)(2).

13. The Department’s proceedings are governed by G.L. c. 30A. Pursuant to G.L. c. 30A, § 10, “agencies shall afford all parties an opportunity for full and fair hearing.”

14. An agency only may make a disposition of an adjudicatory proceeding without a hearing upon stipulation, agreed settlement, consent order, or default. G.L. c. 30A, § 10. At this time, RMLD has not consented to a disposition without a hearing.

15. Further, parties such as RMLD are entitled to a reasonable opportunity to prepare and present evidence and argument. *See* G.L. c. 30A, § 11.

16. Specifically, RMLD has a statutory right to present and cross-examine witnesses, introduce evidence and submit rebuttal evidence. G.L. c. 30A, § 11(3). Pursuant to G.L. c. 30A, § 11(3), “[e]very party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses who testify, and to submit rebuttal evidence.”

17. The current procedural schedule does not afford RMLD the rights to conduct discovery as required by 220 C.M.R. 1.06(6) or a reasonable opportunity to prepare and present evidence, examination and argument or to a full and fair hearing as required by G.L. c. 30A, §§ 10 and 11.

WHEREFORE, the Reading Municipal Light Department respectfully requests the following:

A. A revision of the procedural schedule to allow MMWEC seven days – to July 24, 2001 - to respond to RMLD's discovery requests;

B. A revision to the procedural schedule to accommodate additional discovery as needed and to evaluate whether a hearing will be necessary to resolve any issues in dispute;

C. A hearing within seven days after MMWEC's last discovery responses in this reopened proceeding;

D. A hearing which will allow the presentation of evidence, including examination of witnesses regarding the new evidence presented pursuant to the Department's July 13, 2001 Order;

E. Simultaneous initial briefs seven days after the aforementioned hearing and any record responses pursuant to such hearing; and

F. Simultaneous reply briefs seven days after the initial briefs have been filed with the Department.

READING MUNICIPAL LIGHT DEPARTMENT,

By its attorneys,

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Dated: July 20, 2001